IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4735 OF 2005

Mrs. Geeta Gupta & Anr. ..Petitioners.

Versus

Mr. B.A.Kathawalla,
Special Recovery officer of Zoroas-
train Co-op. Bank Ltd., & Others ..Respondents.

Mr. Nitin Vhatkar with G.S.Hiranandani for the Petitioners.

Mr. Prashant Naik for Respondent Nos.1 & 2.

CORAM : S. A. BOBDE, J.

DATED : 21TH JULY, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr. Naik, learned Advocate waives service of Rule for Respondents Nos. 1 and 2.

Heard by consent.

2. By this petition, the petitioners, who are debtor against whom a recovery certificate is issued by the Registrar under section 101 of the Maharashtra Co-operative Socities Act, have challenged the order of the Maharashtra State Co-operative Appellate Court, upholding the order of the Co-operative Court, refusing to grant injunction, restraining the respondents - bank from executing Award dated 29.06.2004. This application for injunction was made in the contempt petition preferred under section 148A of the Maharashtra Co-operative Socities Act.

3. According to the Petitioners the contempt lies in the fact that the respondent bank misrepresented that there is Award passed by the Co-operative Court and not a recovery certificate passed by the Assistant Registrar under section 101 and that constutes a contempt. On this basis, the petitioners sought an injunction against the recovery proceedings in pursuance of the certificate under section 101. According to the petitioners the bank forcibly obtained a letter dated 20th November, 2004, in which the petitioners is said to have agreed to hand over

possession. This also according to the petitioners, amounts to contempt under section 148A(4) of the Maharashtra Co-operative Socities Act. Section 148A(4) reads as follows:-

. **148A. Contempt of Co-operative Courts and of Co-operative Appellate Court .--**

(1) .....

(2) .....

(3) .....

(4) If any person commits any act or publishes any writing which is calculated to improperly influence a Co-operative Court or the Co-operative Appellate Court to bring any such Court or a member thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of the said authorities, such person shall be deemed to be guilty of contempt of the said authorities.

4. There is no need to decide the question

whether the aforesaid Act, in fact, amounts to contempt or not. It is pointed out by Mr. Naik, learned counsel for the respondents, that an error was in fact made while issuing the order for attachment / sale of the petitioners' properties in the statement that that the attachment has been made in pursuance of "the Award". Mr. Naik has placed on record the corrigendum which states that whenever there is reference to "the Award" passed by the Co-operative Court, the same should be read as a "certificate". This fact was brought to the notice of the Appellate Court. In the circumstances, there seems to be no prima facie right to an injunction. The question whether the petitioners forcibly wrote the aforesaid letter or did so voluntarily has not yet been decided.

5. In the circumstances, there is no error of law apparent on the face of the order of the appellate Court, refusing to grant injunction. The petitioners are at liberty to avail of such statutory remedies as may be available to them against the proceedings for recovery. Petition is dismissed.

Dt. 21.07.2005 (S.A. BODE,J.)

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